

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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BOSTON GAS COMPANY) D.T.E. 00-74

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**ATTORNEY GENERAL'S MOTION TO SUSPEND
FURTHER PROCEEDINGS PENDING COMPLIANCE WITH THE
SUPREME JUDICIAL COURT'S REMAND ORDER**

The Attorney General of the Commonwealth ("Attorney General") moves the Department of Telecommunications and Energy ("Department" or "DTE"), formerly the Department of Public Utilities, to suspend all further actions and proceedings in this matter until the Department decides the matters remanded to it by the Supreme Judicial Court in *Boston Gas Company v. Department of Public Utilities*, SJC-07970, issued on August 13, 1999.

Good and necessary cause exists for the Department to grant this motion, as demonstrated by the facts set forth below:

1. On September 15, 2000, the Boston Gas Company ("Boston Gas" or "Company") filed tariff schedules of proposed rates and charges designed to increase the Company's annual base revenues by \$3,273,861. The Department docketed the matter as D.T.E. 00-74, Boston Gas Company Fourth Annual PBR Compliance Filing.

2. Previously, on August 13, 1999, the Supreme Judicial Court had remanded portions of the Department's Orders in *Boston Gas Company*, D.P.U. 96-50 and 96-50-C to the Department for further proceedings and decision. The remanded Orders included the Performance Based Rates or "PBR" formula, and specifically the so-called "accumulated inefficiencies" portion of the calculation of the productivity offset. *Boston Gas Company v. Department of Public Utilities*, SJC-07970, August 13, 1999, at 1-2 (Remand Order).

3. Prior to the Remand Order, the Department had addressed the accumulated inefficiencies issue in another proceeding. There, the Department concluded that the rationale for the adoption of price cap regulation requires recognition of a company's accumulated inefficiencies within the calculation of the productivity offset component of the price cap formula:

" ... we find that our acceptance of the underlying rationale for approving price cap regulation, i.e., that the average firm under price cap regulation will be more efficient than the average firm under ROR regulation, requires us also to find that there are

accumulated inefficiencies in the Company's current operations...These inefficiencies nevertheless should be accounted for in the price cap formula."

NYNEX, D.P.U. 94-50 (1995) at 167.

4. In view of the integral nature of the accumulated inefficiencies factor in the PBR formula fashioned by the Department, the Department should not allow the requested rate increase to take effect until the Remand Order has established a record supporting its decision on the calculation of the productivity offset and all of its component parts. *Boston Edison Co. v. Department of Public Utilities*, 419 Mass. 738, 748 (1995) (when a matter has been remanded to the Department from the Court, the Department is obligated to re-open the record, conduct hearings and issue a reasoned decision.)

5. The impact on consumers in the Commonwealth is clear. Under the Department's original order, Boston Gas would have proposed a rate increase of approximately \$620,000 rather than the \$3,273,861 included in the September 15, 2000 filing. Now, with the Remand Order in effect, consumers face a five-fold increase affecting Boston Gas rates.

6. The Department has two choices: either to terminate the operation of the PBR plan for Boston Gas or to suspend the operation of the plan until such time as a productivity offset has been re-established through the remand proceeding.

WHEREFORE, good and necessary cause existing, the Attorney General urges the Department to terminate PBR regulation of Boston Gas or to suspend the operation of the PBR plan pending the re-establishment of a productivity offset as a result of the necessary remand proceeding, consistent with applicable law and precedent.

RESPECTFULLY SUBMITTED,

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